BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2022-23/21894]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Cox and Kings Financial Service Limited
[PAN: AAGCC7969K]

In the matter of Cox and Kings Financial Service Limited

FACTS OF THE CASE IN BRIEF

1. Cox and Kings Financial Service Ltd (hereinafter referred to as '**CKFSL**' or '**the company'** or '**Noticee' or 'By Name'**) is a company having its shares listed on BSE Ltd. ('**BSE'**) and National Stock Exchange of India Limited ('**NSE'**) (hereinafter collectively referred to as "**stock exchanges**") with effect from April 11, 2019. Securities and Exchange Board of India ("**SEBI**") received a complaint dated June 14, 2019 on SCORES against CKFSL, *inter-alia*, alleging insider trading and employment of bad accounting practices. Based on the complaint, SEBI conducted investigation in the matter of CKFSL during the period from April 01, 2018 to March 31, 2019 (hereinafter referred to as "**investigation period**"), to ascertain whether the published financial statements of the company were prepared in accordance with the applicable and notified accounting standards and whether there was any violation of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**).

2. Pursuant to the aforementioned investigation, SEBI observed that Noticee did not present a true and fair view of its financial results for the nine month period ending on December 31,

2018. Therefore, SEBI initiated adjudication proceedings against Noticee under the provisions of Section 15HA of SEBI Act for the alleged violations of Section 12A(a),(b),(c) of the SEBI Act read with Regulation 3 (b), (c), (d) and Regulation 4(1) and 4(2)(f) of the PFUTP Regulations by Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. On June 29, 2020, competent authority of SEBI appointed Ms. Sangeeta Rathod, General Manager, as Adjudicating Officer (‘**1st erstwhile AO’**) under Section 15-I (1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Adjudication Rules’**) to inquire into and adjudge the alleged violations by the Noticee under Section 15HA of the SEBI Act. Subsequently, on transfer of the 1st erstwhile AO to another department of SEBI, this case was transferred to Shri Prasanta Mahapatra, Chief General Manager, as Adjudicating Officer (‘**2nd erstwhile AO**’). Thereafter, vide a communication order dated December 04, 2020, the case has been transferred to undersigned. It has been advised that except for the change of the Adjudicating Officer, the other terms and condition of the original orders (whereby the 2nd erstwhile AO was appointed) ‘*shall remain unchanged and shall be in full force and effect’*. It has also been advised that ‘*I shall proceed in accordance with the terms of reference made in the Original Orders read with this Order*.’

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A show-cause notice dated July 12, 2021(hereinafter referred to as ‘**SCN**’) was issued to Noticee under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon it under the provisions of Section 15HA of SEBI Act for the violation of provisions of Section 12A(a),(b),(c) of the SEBI Act read with Regulation 3 (b), (c), (d) and Regulations 4(1) and 4(2)(f) of the PFUTP Regulations alleged to have been committed by it.

5. The SCN was sent through Speed Post with Acknowledgement due (**SPAD**) to the registered address of Noticee and also sent through digitally signed email dated July 13, 2021. I note that the SCN sent through SPAD to the registered office address of Noticee returned undelivered but the SCN sent through email was duly served on Noticee. Thereafter, it was

noted from the website of Ministry of Corporate Affairs that Corporate Insolvency Resolution Process (**CIRP**) under Insolvency and Bankruptcy Code of India had been initiated against Cox & Kings Financial Service Limited. Therefore, SCN was sent to Mr. Pradeep Kumar Sethi, Resolution Professional (**RP**) of Noticee on February 21, 2022 through hand delivery and vide digitally signed email dated February 21, 2022. In this regard, RP, vide his letter dated February 25, 2022, replied to the SCN stating that Noticee was under CIRP and he came into the management of Noticee after his appointment as RP was made by Hon'ble National Company Law Tribunal (**NCLT**), Mumbai Bench on May 07, 2021. Further, RP stated that he was only able to access financial statements for the FY 2018-19 of Noticee from the stock exchange website and no detailed accounting practice, workings and approach followed by Noticee were made available to him and that that there was no cooperation from the KMPs /erstwhile directors/promoters towards providing him with documents/information pertaining to affairs of Cox & Kings Financial Service Limited for the period prior to initiation of CIRP. RP also submitted that Hon'ble NCLT Order dated May 07, 2021 had declared a moratorium under Section 14 of Insolvency and Bankruptcy Code of India (IBC) and that there was a bar on initiation or continuation of proceedings during the moratorium period and therefore, requested that current management of Noticee, which is with RP, may not be inquired under Adjudication Rules and penalized under Section 15HA of SEBI Act.

6. In the interest of natural justice, through hearing notice dated April 04, 2022, RP of Noticee was granted an opportunity of personal hearing in the matter before the undersigned on April 22, 2022. The aforesaid hearing notice was sent to RP through SPAD and digitally signed email and the same was duly served on him. On the scheduled date of hearing, RP appeared for the hearing and reiterated the contents of his earlier reply dated February 25, 2022. During the hearing, RP reiterated that there was bar on initiation or continuation of proceedings during the moratorium period against current management of Noticee, which is lying with RP. During the hearing, RP undertook to file transaction statements and additional information with respect to Noticee on April 29, 2022. Vide email dated April 30, 2022, audited accounts of Noticee for FY 2019-20, FY 2020-2021, bank statements, transaction audit report was furnished by the RP.

7. Thereafter, vide email dated November 23, 2022, office of RP informed that liquidation has been initiated with respect to Noticee vide Order of Hon'ble NCLT, Mumbai Bench, dated 11th October, 2022. In this regard, it was also informed that RP had been appointed as liquidator

of Noticee vide the aforementioned Order of Hon'ble NCLT and requested office of Adjudicating Officer to submit claims, if any, in the matter on or before December 07, 2022.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have carefully perused the charges levelled against Noticee, replies/submissions filed by RP and other documents/ evidence available on record. The issues that arise for consideration in the present case are:
   (i) Whether Noticee has violated Section 12A(a),(b),(c) of the SEBI Act read with Regulation 3 (b), (c), (d) and Regulation 4(1) and 4(2)(f) of the PFUTP Regulations?
   (ii) Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act?
   (iii) If the answer to issue no. (ii) is in affirmative, then what should be the quantum of monetary penalty?

9. At this juncture, I find it pertinent to examine the relevant provisions of the PFUTP Regulations and the SEBI Act which are reproduced hereunder:

   SEBI Act

   Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

   12A. No person shall directly or indirectly—

   (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

   (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

   (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;.

   (d) …..

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) …

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

(2) Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following:—

(a) ….

(f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(g) ….

10. Before proceeding to examine the case on its merits, I find it appropriate to deal with preliminary submissions made by RP in the present matter vide his submissions dated February 25, 2022. In his aforesaid submissions, RP has stated that as per Section 14 of IBC, Hon'ble NCLT had declared a moratorium prohibiting, *inter alia,* the institution of suits or

continuation of pending suits or proceedings against Noticee including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.

11. RP has contended that moratorium under Section 14 of IBC has been imposed on May 07, 2021 and there was bar on initiation or continuation of proceedings during the moratorium period. In this context, I place reliance on the decision of the Hon'ble Supreme Court in Sundaresh Bhattv. Central Board of Indirect Taxes and Customs, 2022 SCC Online SC 1101, wherein the Hon'ble Supreme Court has held as under:

    "46. Therefore, this Court held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the Customs Act in this context.

    56. On the basis of the above discussions, following are our conclusions:

    i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

    ii) After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority..."

12. From the aforesaid judgment of the Hon'ble Supreme Court, it can be stated that there is no bar on SEBI to assess/determine the penalty to be imposed on an entity. With regard to the aforesaid contention of RP, I note that although the adjudication proceedings have been initiated through the issue of SCN during the moratorium period, the Noticee is now under liquidation. In this regard, the RP, who has also been appointed the Liquidator in the matter, has vide email dated November 23, 2022, requested the office of Adjudicating Officer to submit claims, if any, in the matter on or before December 07, 2022. So at this juncture, having regard to the aforesaid reply of RP and placing reliance on the aforesaid order of Hon'ble Supreme Court, I find that the limited purpose of these proceedings is to determine if the Noticee has violated the provisions of PFUTP Regulations and SEBI Act, as alleged, and to assess the

penalty, if any, in order to enable SEBI to crystallize its claims and to lodge the said claim with the Liquidator.

13. I also note that the order of the Hon'ble Securities Appellate Tribunal (**SAT**) in Dewan Housing Finance Corporation Ltd v. SEBI (Appeal No. 206 of 2020 decided on October 09, 2020) which dealt with similar issue has been challenged by SEBI before the Hon'ble Supreme Court and the same is pending. In view thereof, I note that the instant proceedings qua the Noticee can be continued to determine if the Noticee has violated the aforesaid provisions of law as alleged in SCN and if so, assess and determine the penalty. Having clarified regarding the said contentions of Noticee regarding instant proceedings, I shall now deal with the allegations levelled against Noticee, on merits of the case for the violations alleged in the SCN.

Issue 8(i) : Whether Noticee has violated Section 12A(a),(b),(c) of the SEBI Act read with Regulations 3 (b), (c), (d), 4(1) and 4(2)(f) of the PFUTP Regulations?

14. It has been alleged in the SCN that the accounting treatment of interest adopted by Noticee was not in accordance with Accounting standards and accordingly the financials statements of Noticee for the nine month period ending on December 31, 2018 did not present a true and fair view of its affairs due which it has been alleged that Noticee has violated the provisions of provisions of Section 12A(a),(b),(c) of the SEBI Act read with Regulation 3 (b), (c), (d) and Regulation 4(1) and 4(2)(f) of the PFUTP Regulations.

15. In this context, I note that as per Companies Act, 2013, a company is required to follow the applicable and notified Accounting Standards to ensure that the financial statements prepared by it give true and fair view of its state of affairs, the profit/loss and its cash flows. From the Annual Report of the Noticee for the financial year 2018-19, I observe that it had prepared its financial statements in accordance with Indian Accounting Standards notified under Section 133 of the Companies Act, 2013 read together with the Companies (Indian Accounting Standards) Rules, 2015.

16. The relevant extracts of the Indian Accounting Standards dealing with recording of Borrowing Cost are as follows:

Para 27 of Ind AS 1: Preparation of Financial Statements:

"*An entity shall prepare its financial statements, except for cash flow information, using the accrual basis of accounting."*

Accrual basis of accounting requires that an entity should record accounting transactions for revenue when earned and expenses when incurred so that the complete impact of a business transaction can be seen within a single reporting period.

Para 8 of Ind AS 23: Borrowing Cost:

"*An entity shall capitalise borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset as part of the cost of that asset. An entity shall recognise other borrowing costs as an expense in the period in which it incurs them."*

17. I observe from the audited financial results for financial year(FY) 2018-19, as placed on record that the figures of quarterly profit before tax for 4 quarters of 2018-19 were reported by Noticee as under:

Quarter ending	**Profit Before tax (Rs in crores)**
June 30, 2018	9.14
September 30, 2018	2.10
December 31, 2018	3.43
March 31, 2019	(9.70)
Total	**4.97**

18. The above table shows that Noticee reported profit before tax of Rs.14.67 crores for nine months ending on December 31, 2018 or an average profit before tax of Rs. 4.89 crores per quarter till December 2018. However, I find that Noticee reported loss of 9.70 crores for the quarter ending on March 31, 2019, dragging the profit before tax for the entire FY 2018-19 to Rs. 4.97 crores.

19. From documents placed on records, I note the following quarter-wise details of the finance cost for FY 2018-19 as per the books:

Quarter ending	Finance Cost (Rs in crores)
June 30, 2018 (Q1 FY19)	7.44
September 30, 2018 (Q2 FY19)	10.23
December 31, 2018 (Q3 FY19)	8.65
March 31, 2019 (Q4 FY19)	18.02
Total	**44.34**

20. Upon perusal of Noticee's email dated August 30, 2019, in reply to SEBI's query during investigation, I observe that Noticee had stated that during the demerger related activity, Noticee had inadvertently missed out on correctly recording 19 days of September Interest in Q2 FY19 and interest for December 2018 in Q3 2019 and that this matter was identified in Q4 FY19 and accordingly, the interest for March 2019 was recorded in Q4 FY19 itself. Hence, as per the Noticee's reply, an additional interest cost of Rs 3.81 crores pertaining to Q3 FY 19 was booked in Q4 FY19, resulting in higher finance costs.

21. I note that in its aforementioned email, Noticee further stated that the above point coupled with the rising borrowing and interest costs was the reason for the additional interest expense of Rs 9.37 crores (Rs 18.02 crores - Rs 8.65 crores) for Q4 FY19.

22. The following are the details of finance cost as per books and actual quarterly finance cost:

Quarter	Finance cost as per books (Rs in crores)	Actual finance cost (Rs in crores)	Difference (Rs in crores)
June 2018	7.44	7.44	-
September 2018	10.23	12.18	(1.95)
December 2018	8.65	10.50	(1.85)

Quarter	Finance cost as per books (Rs in crores)	Actual finance cost (Rs in crores)	Difference (Rs in crores)
March 2019	18.02	14.21	3.81
Total	**44.34**	**44.33**	**0.01**

23. From the foregoing, I observe that Noticee incorrectly reported the figures for finance costs as well as profit before tax for the quarters ending on September 30, 2018 and December 31, 2018, which were subsequently rectified in the 4th quarter ending on March 31, 2019. I also find that Noticee had admitted to the same during the course of investigation, stating it to be an inadvertent error.

24. I note that vide his letter dated April 29, 2022, as submitted through email dated April 30, 2022, the RP has furnished further documents like financials of Noticee for FYs 2019-2020 and 2020-21, transaction audit report etc. From the perusal of these documents, I observe that financial statements of Noticee for FYs 2019-20 and 2020-21 as well as transaction audit report are outside the purview of the present adjudication proceedings.

25. It is stated in the SCN that Noticee had issued an Information Memorandum dated March 13, 2019 (**IM**) and Newspaper Advertisement dated March 29, 2019 (**Newspaper Advertisement**). From perusal of the extract of the Information Memorandum dated March 13, 2019 and Newspaper Advertisement dated March 29, 2019, as placed on record, I find that Noticee had disclosed the profit before tax for the nine months' period ending on December 31, 2018 as Rs 14.67 crores which should have been Rs 10.86 crores based on actual finance cost as determined above. Therefore, it is clear that Noticee overstated its profit before tax by Rs 3.81 crores for the nine months' period ending on December 31, 2018.

26. I further observe that in its aforesaid Information Memorandum, Noticee Company has mentioned that it maintains accounts on accrual basis and borrowing costs are expensed in the period in which they are incurred. However, as observed earlier in the order, the Noticee recorded interest cost incorrectly for quarters ending on September 30, 2018 and December 31, 2018 and it did not account the interest cost for the month of December 2018 in its results for nine-month period ending on December 31, 2018. Therefore, it is clear that the accounting treatment of interest i.e. borrowing cost adopted by Noticee was not in accordance with the applicable and notified Accounting Standards as it had overstated its profit before tax by Rs

3.81 crores for the nine-month period ending on December 31, 2018 and therefore, did not present a true and fair view of its affairs.

27. At this juncture, the issue to be determined is whether the findings observed against Noticee in the preceding paragraphs amount to violation of Section 12A(a),(b),(c) of the SEBI Act read with Regulation 3 (b), (c), (d) and Regulation 4(1) and 4(2)(f) of the PFUTP Regulations. It has been noted in the earlier part of the Order that Noticee has claimed the aforesaid misstatements in the financials of Noticee to have occurred due to inadvertent error on its part. I also note that the above mentioned Information Memorandum and Newspaper Advertisement were issued before the close of the accounts of the fourth quarter ending on March 31, 2019.

28. I note that Section 12A(a), (b), (c) of the SEBI Act, 1992 deals with fraud related to securities market and the provisions of Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) of PFUTP Regulations, are also related to securities market fraud/manipulation/ unfair trade practices. Section 12A (a),(b)&(c) of the SEBI Act may be invoked in cases where there exists any manipulative or deceptive device or contrivance, any device, scheme or artifice to defraud or any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, purchase or sale of any securities.

29. I find that Noticee had submitted to SEBI during investigation that the incorrect reporting of profit before tax for the two quarters ending on September 30, 2018 and December 31, 2018 happened due to inadvertent error which was duly rectified during the subsequent quarter ending March 31, 2019. As noted earlier in the Order, Noticee had stated investigation that during the demerger related activity, Noticee had inadvertently missed out on correctly recording 19 days of September Interest in Q2 FY19 and interest for December 2018 in Q3 2019 and that this matter was identified in Q4 FY19 and accordingly the interest for March 2019 was recorded in Q4 FY19 itself. In this respect, I find that the IM and the Newspaper Advertisement containing the inflated profit figures for the nine month period ending on December 31, 2018 were issued in the Q4 FY 19 itself. Significantly, the Newspaper Advertisement was issued on the last working day of Q4 FY 19, by when, as per Noticee's own admission, they were definitely aware of the incorrect profit figures in the nine month period prior to that quarter. Despite knowing the aforementioned inflated and incorrect profit figures, Noticee still proceeded to issue these public announcements without rectifying the

financials. On the contrary, Noticee issued these announcements without even a whisper of such incongruence in profit figures being reported on those announcements.

30. I note that Regulation 4(1) of PFUTP Regulations at the relevant time, dealt with fraudulent and unfair trade practices relating to securities while Regulation 4(2) of PFUTP Regulations is nothing but an enumeration of specific instances of fraudulent and unfair trade practices relating to securities. I note that Regulation 4(2)(f) of PFUTP Regulations considers publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements which is not true, as deemed to be a manipulative, fraudulent or unfair trade practice only when it is done "knowingly". In light of the aforesaid observations, I am inclined to hold the aforementioned announcements made by Noticee through the IM and the Newspaper Advertisement to have been done while in the knowledge that such reporting of financial information was not true and therefore was fraudulent. Therefore, I am of the view that Noticee had knowingly published such incorrect financial statements in the public domain which amounted to violation of Regulation 4(2)(f) of PFUTP Regulations.

31. The common thread through these provisions is that the ingredients of fraud/ manipulation/ unfair trade practices must be satisfied. In this regard, I find it pertinent to note that fraud has been defined in Regulation 2(1)(c) of PFUTP Regulations, which is reproduced hereunder:

"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behaviour by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;

32. From the aforementioned definition of 'fraud' as given in Regulation 2(1)(c) of PFUTP Regulations, I note that for an act or omission to be considered as fraud under the aforesaid definition, the same has to be done in order to induce another person or his agent to deal in securities. In this respect, I place reliance on the judgement of Hon'ble Supreme Court of India in SEBI and Ors v. Kanaiyalal Baldevbhai Patel where it has been held that inducement is required to constitute 'fraud' under PFUTP Regulations.

33. I find that Noticee by making misrepresentation in its financial statements, which are available in public domain had defrauded the investors in securities of Noticee .The financial statements of a company are relied upon by investors for making their investment decisions and any misrepresentation in the financials of the company may influence sale or purchase of securities and have adverse impact on interest of investors. In this regard, I find it relevant to place reliance on the judgement of Hon'ble Supreme Court in in the matter of N. Narayanan vs Adjudicating Officer, SEBI, wherein in its Order dated April 26, 2013, it has been held *"..........Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities*

market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality".

34. I note that shares of Noticee got listed on stock exchanges on April 11, 2019. Placing reliance on the aforesaid judgements of Hon'ble Supreme Court of India, I find that Noticee's aforesaid manipulative act of misstating its financials just before the date of listing, satisfy the ingredients of fraud as per SEBI Act and PFUTP Regulations since such misstatements in financials have the power to wrongfully induce gullible investors in trading in the scrip of Noticee. In light of the above, I find that allegation in SCN that Noticee has violated Section 12A(a),(b),(c) of the SEBI Act read with Regulation 3 (b), (c), (d) and Regulation 4(1) and 4(2)(f) of the PFUTP Regulations stands established.

Issue 8(ii): Do the violations attract monetary penalty under Section 15HA of SEBI Act?

35. It has been established in preceding paragraphs that Noticee has violated Section 12A (a),(b),(c) of the SEBI Act read with Regulation 3 (b), (c), (d) and Regulation 4(1) and 4(2)(f) of the PFUTP Regulations. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held that: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established......*"

36. Therefore, in view of the violations as established and placing reliance on the above judgment of Hon'ble Supreme Court, I find that the aforesaid violations committed by Noticee would attract monetary penalty under Section 15HA of the SEBI Act. The said provision of the SEBI Act reads as under:

SEBI Act

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Issue No 8(iii) - What should be the quantum of monetary penalty?

37. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which read as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J *- While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation- For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

38. In the instant case, it is not possible from the material on placed record to quantify the amount of disproportionate gain or unfair advantage resulting from the aforesaid default of Noticee or the consequent loss caused to investors as a result of the default. Further, the material on record also do not show that violations of Noticee is repetitive in nature. However, Noticee had failed to present true and fair financial statements and I find that such serious laches on the part of Noticee amount to an act of misleading the investors and would have an adverse

impact on investor interests. Be that as it may, it is also a fact that Noticee had rectified the financials in the subsequent quarter and this may be considered as a mitigating factor in the present case.

ORDER

39. Having considered all the facts and circumstances of the case, the material available on record and also the factors mentioned in Section 15J of the SEBI Act as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose Rs 5,00,000/- (Rupees Five Lakhs) on Noticee i.e Cox & King Financial Service Limited.

40. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

41. As noted earlier in the Order, Noticee has gone into the liquidation and in this respect, I note that penalty imposed with respect to Noticee may be filed as a claim with the Liquidator of Noticee.

42. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Liquidator of Noticee viz. Mr. Pradeep Kumar Sethi.

Place: Mumbai	**SOMA MAJUMDER**
Date: December 07, 2022	**ADJUDICATING OFFICER**